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11 Attorneys for Defendants SELDAT, INC.
and SELDAT DISTRIBUTION, INC.

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

16 DOMENICO D’CARPIO, Individually
and on Behalf of all Others Similarly
17 Situated,

18 Plaintiffs,

19 vs.

20 SELDAT, INC., and SELDAT
DISTRIBUTION, INC.

21 Defendants.
22
23

Case No. 2:19-cv-00174-JLS-RAO

**DEFENDANT SELDAT
DISTRIBUTION, INC.’S ANSWER
TO PLAINTIFF’S FIRST
AMENDED COLLECTIVE AND
CLASS ACTION COMPLAINT**

Honorable Josephine L. Staton

24 Defendant SELDAT DISTRIBUTION, INC. (“Defendant”), hereby answers
25 the unverified First Amended Collective and Class Action Complaint (“Amended
26 Complaint”) as follows:

27 1. Answering Paragraph 1 of the Amended Complaint, Plaintiff’s
28 assertion that he brings this case as a collective action and class action requires

1 neither an admission nor denial. Defendant admits that Plaintiff worked for
2 Defendant as a security guard in Compton, California. Defendant denies the
3 remaining allegations in Paragraph 1.

4 2. Defendant admits that Plaintiff worked as a security guard and denies
5 the remaining allegations of Paragraph 2.

6 3. Defendant denies the allegations contained in paragraph 3 of the
7 Complaint.

8 4. Answering Paragraph 4 of the Amended Complaint, Plaintiff's
9 assertion that he brings his FLSA claims on behalf of a proposed collective of
10 similarly situated security guards, requires neither an admission nor denial.
11 Defendant denies the remaining allegations of paragraph 4.

12 5. Answering Paragraph 5 of the Amended Complaint, Plaintiff's assertion
13 that he brings his California state law claims under Rule 23 of the Federal Rules of
14 Civil Procedure requires neither an admission nor denial. Defendant denies the
15 remaining allegations of paragraph 5.

16 6. Defendant denies the allegations contained in paragraph 6 of the
17 Complaint.

18 7. Answering Paragraph 7 of the Amended Complaint, Defendant does
19 not contest the propriety of this Court exercising jurisdiction over the subject matter
20 of this action.

21 8. Answering Paragraph 8 of the Amended Complaint, Defendant does
22 not contest venue in this Court.

23 9. Answering Paragraph 9 of the Amended Complaint, Defendant lacks
24 sufficient information to admit or deny the allegations herein.

25 10. Answering Paragraph 10 of the Amended Complaint, Defendant admits
26 the allegations therein.

27 11. Answering Paragraph 11 of the Amended Complaint, Defendant denies
28 that Seldat Distribution, Inc. is a subsidiary of Seldat, Inc. Defendant admits that

1 Seldat Distribution, Inc. maintains its headquarters in the state of New Jersey, and is
2 authorized to do business in California and New Jersey among other states.

3 Defendant denies the remaining allegations of paragraph 11.

4 12. Answering Paragraph 12 of the Amended Complaint, Plaintiff's
5 assertion that he purports to bring this case as a collective and class action requires
6 neither admission nor a denial.

7 13. Answering Paragraph 13 of the Amended Complaint, Plaintiff's
8 assertion as to the criteria for inclusion within the proposed class requires neither an
9 admission nor a denial. Defendant denies any allegation that there are certain
10 individuals who meet the criteria for inclusion within Plaintiff's proposed class.

11 14. Answering Paragraph 14 of the Amended Complaint, Plaintiff's
12 assertion that he purports to bring this case as a class action requires neither an
13 admission nor a denial. Defendant denies any allegation that there are certain
14 individuals who meet the criteria for inclusion within Plaintiff's proposed class.

15 15. Answering Paragraph 15 of the Amended Complaint, this allegation
16 requires neither an admission nor denial.

17 16. Answering Paragraph 16 of the Amended Complaint, this allegation
18 requires neither an admission nor denial.

19 17. Answering Paragraph 17 of the Amended Complaint, Defendant denies
20 the allegations therein.

21 18. Answering Paragraph 18 of the Amended Complaint, Defendant denies
22 the allegation that the "claims of the named Plaintiff are representative and similar
23 to the claims of the proposed Classes. Defendant lacks sufficient information to
24 admit or deny the remaining allegations of Paragraph 18.

25 19. Answering Paragraph 19 of the Amended Complaint, Defendant denies
26 the allegations therein.

27 20. Answering Paragraph 20 of the Amended Complaint, Defendant, on
28 information and belief, admits that in or about July of 2017, Plaintiff was retained to

1 work as a security guard in Compton, California. Defendant admits Plaintiff was
2 classified as an independent contractor, and that Defendant engages other security
3 guards as independent contractors at the Compton facility and at other facilities in
4 California and in the United States. Defendant denies Plaintiff meets the criteria to
5 be an employee under both federal and California law. Defendant denies the
6 remaining allegations set forth in Paragraph 20.

7 21. Answering Paragraph 21 of the Amended Complaint, Defendant denies
8 the allegations set forth in Paragraph 21.

9 22. Answering Paragraph 22 of the Amended Complaint, Defendant is
10 without sufficient information to admit or deny Plaintiff's allegation as to the
11 amount of time worked each shift or as to the provision of meal breaks. Defendant
12 denies the remaining allegations of Paragraph 22.

13 23. Answering Paragraph 23 of the Amended Complaint, Defendant is
14 without sufficient information to admit or deny Plaintiff's allegation as to the
15 amount of time worked each shift or as to the provision of rest breaks. Defendant
16 denies the remaining allegations of Paragraph 23.

17 24. Answering Paragraph 24 of the Amended Complaint, Defendant is
18 without sufficient information to admit or deny Plaintiff's allegation as to the
19 amount of time worked in a day or a week. Defendant denies the remaining
20 allegations of Paragraph 24.

21 25. Defendant denies the allegations of Paragraph 25.

22 26. Defendant denies the allegations of Paragraph 26.

23 27. Answering Paragraph 27 of the Amended Complaint, Plaintiff's
24 assertion that this claim is "brought on behalf of a collective of similarly situated
25 individuals" requires neither an admission nor denial. Defendant denies the
26 remaining allegations of paragraph 27.

27 28. Answering Paragraph 28 of the Amended Complaint, Plaintiff's
28 assertion that this claim is "brought on behalf of a class of similarly situated

1 individuals” requires neither an admission nor denial. Defendant admits that
2 California Labor Code §§ 510 and 1194 impose the obligations specified.
3 Defendant denies the remaining allegations of paragraph 28.

4 29. Answering Paragraph 29 of the Amended Complaint, Plaintiff’s
5 assertion that this claim is “brought on behalf of a class of similarly situated
6 individuals” requires neither an admission nor denial. Defendant denies the
7 remaining allegations of paragraph 29.

8 30. Answering Paragraph 30 of the Amended Complaint, Defendant admits
9 that California Labor Code § 203 provides for penalties in the event an employer
10 willfully fails to pay an employee final wages in the period of time required.
11 Defendant denies the remaining allegations in paragraph 30.

12 31. Answering Paragraph 31 of the Amended Complaint, Plaintiff’s
13 assertion that this claim is “brought on behalf of a class of similarly situated
14 individuals” requires neither an admission nor denial. Defendant admits that
15 California Labor Code § 226(a) requires an employer to provide its employee with
16 itemized wage statements containing the information stated therein. Defendant
17 denies the remaining allegations of paragraph 31.

18 32. Answering Paragraph 32 of the Amended Complaint, Plaintiff’s
19 assertion he seeks declaratory and injunctive relief requires neither an admission nor
20 denial. Defendant denies the remaining allegations of paragraph 32.

21 33. Answering Paragraph 33 of the Amended Complaint, Plaintiff’s
22 assertion that he requests a trial by jury requires neither an admission nor denial.

23 **PLAINTIFF’S PRAYER FOR RELIEF**

24 The remainder of the Amended Complaint constitutes Plaintiff’s Prayer for
25 Relief, which requires no direct response. To the extent a response is required.
26 Defendant denies that Plaintiff is entitled to recover any of the relief stated in
27 Plaintiff’s Prayer for Relief.
28

1 **ANY ALLEGATIONS NOT EXPRESSLY ADMITTED ARE DENIED**

2 Any allegations that have not been specifically admitted are hereby denied.

3 **AFFIRMATIVE DEFENSES**

4 Defendant asserts and alleges each of the following affirmative defenses set
5 forth below.

6 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

7 Plaintiff has not stated a claim upon which relief can be granted.

8 **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9 Any recovery on the class allegations of the Amended Complaint is barred
10 because Plaintiff has failed to identify a proper and ascertainable class.

11 Additionally, Plaintiff is not an adequate representative of any putative class of
12 plaintiffs; his claims are not typical; common questions of law or fact affecting the
13 individual members of the putative class do not predominate; and/or a class action is
14 neither manageable nor superior.

15 **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

16 The purported causes of action alleged in the Amended Complaint are barred,
17 in whole or in part, by the applicable limitations periods provided by law, including,
18 but not limited to those set forth in California Code of Civil Procedure §§ 338, 339
19 and/or 340, California Business and Professions Code § 17208, and in 29 U.S.C. §
20 255.

21 **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

22 The purported causes of action alleged in the Amended Complaint are barred,
23 in whole or in part, by the equitable doctrine of laches, inasmuch as Plaintiff has
24 inexcusably and unreasonably delayed the filing of this action causing prejudice to
25 Defendant.

26 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

27 Plaintiff suffered no damages as a result of the alleged acts or omissions of
28 Defendant, and Plaintiff lacks standing to pursue these claims individually or as

1 representative of a class.

2 **AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

3 Plaintiff, by his own actions, has waived, in whole or in part, each purported
4 cause of action alleged in the Complaint and is now estopped from bringing such
5 causes of action.

6 **AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

7 The meal and rest period claims in the Amended Complaint are barred, in
8 whole or in part, to the extent that Plaintiff or the putative class waived their
9 entitlement to meal and rest periods, or voluntarily chose to skip or to take short
10 meal periods and rest periods or took late meal periods.

11 **AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

12 The claims of Plaintiff or the putative class members fail in whole or in part
13 under the *de minimis* doctrine because any alleged violation of law or damages is
14 based on matters that are inconsequential or incalculable. In addition the damages
15 (if any) associated with such claims are too speculative to be permitted.

16 **AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

17 The purported fourth Count in the Amended Complaint brought pursuant to
18 California Labor Code § 203 is barred in whole or in part because at all relevant
19 times in this matter Defendant had a good-faith belief as to the legality of its
20 conduct within the meaning of Labor Code § 203.

21 **AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred as to all time allegedly worked of which
23 Defendant lacked constructive or actual knowledge.

24 **AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

25 In the event that it is determined that Defendant failed to pay Plaintiff wages
26 owed (which Defendant denies), any violation was not willful, knowing, or in
27 reckless disregard of the provisions of law, and Plaintiff is not entitled to recover
28 penalties, additional damages, liquidated damages, or an extended limitations period

1 that could result from a willful violation.

2 **AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

3 In the event that it is determined that Defendant failed to pay Plaintiff wages
4 owed (which Defendant denies), Plaintiff and others alleged to be similarly situated
5 may not recover liquidated damages because: (1) Defendant and all of its officers,
6 managers, or agents acted in good faith and did not commit any willful violations of
7 any provisions of the FLSA, 29 U.S.C. § 201, et seq., and (2) Defendant and all of
8 its officers, managers, or agents did not authorize or ratify any willful violations
9 with respect to Plaintiff and those alleged to be similarly situated.

10 **AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

11 Defendant reserves the right to amend this pleading to include further
12 affirmative defenses.

13 DATED: August 30, 2019

ROBINSON BROG LEINWAND GREENE
GENOVESE & GLUCK P.C.

16 By: /s/ Michael A. Eisenberg
17 ROGER A. RAIMOND
18 MICHAEL A. EISENBERG
19 Attorneys for Defendants Seldat, Inc. and Seldat
20 Distribution, Inc.

21 DATED: August 30, 2019

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

24 By: /s/ Simon Aron
25 SIMON ARON
26 Attorneys for Defendants Seldat, Inc. and Seldat
27 Distribution, Inc.